

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #5	CCRB Case #: 201705982	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 06/30/2017 11:21 PM	Location of Incident: East 115th Street between 5th Avenue and Madison Avenue; 23rd Precinct stationhouse	Precinct: 23	18 Mo. SOL 12/30/2018	EO SOL 12/30/2018	
Date/Time CV Reported Thu, 07/13/2017 12:33 PM	CV Reported At: IAB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 07/24/2017 2:46 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Perez	17154	951041	023 PCT
2. Officers			Unknown
3. SGT Jonathan Hom	4803	940269	023 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT Jamiel Altaheri	00000	934385	023 PCT
2. POM Julian Febres	08339	941737	023 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Perez	Discourtesy: On East 115th Street, between 5th Avenue and Madison Avenue, Police Officer Jonathan Perez spoke discourteously to § 87(2)(b)	
B. Officers	Force: On East 115th Street, between 5th Avenue and Madison Avenue, officers used physical force against § 87(2)(b)	
C.POM Jonathan Perez	Force: On East 115th Street, between 5th Avenue and Madison Avenue, Police Officer Jonathan Perez hit § 87(2)(b) against a vehicle.	
D.SGT Jonathan Hom	Off. Language: On East 115th Street, between 5th Avenue and Madison Avenue, Sergeant Jonathan Hom made remarks to § 87(2)(b) based upon race.	
E.SGT Jonathan Hom	Force: On East 115th Street, between 5th Avenue and Madison Avenue, Sergeant Jonathan Hom struck § 87(2)(b) with a radio.	
F.POM Jonathan Perez	Force: At the 23rd Precinct stationhouse, Police Officer Jonathan Perez used physical force against § 87(2)(b)	
G.SGT Jonathan Hom	Off. Language: At the 23rd Precinct stationhouse, Sergeant Jonathan Hom made remarks to § 87(2)(b) based upon race.	

## Case Summary

On July 13, 2017, § 87(2)(b) filed this complaint in person at the IAB Command Center. IAB forwarded the complaint to the CCRB, where it was received on July 24, 2017.

On June 30, 2017, at approximately 11:21 p.m., Police Officer Jonathan Perez of the 23<sup>rd</sup> Precinct was in the process of arresting § 87(2)(b) for assault. § 87(2)(b) alleged that PO Perez said, “This is the motherfucker right here,” and when § 87(2)(b) asked him what he was talking about, “You know what the fuck this is.” (**Allegation A – Discourtesy**, § 87(2)(g)). § 87(2)(b) alleged that after being forced to the ground, unidentified officers punched him on his back and head (**Allegation B – Force**, § 87(2)(g)). § 87(2)(b) alleged that PO Perez twice forced his head into a police vehicle (**Allegation C – Force**, § 87(2)(g)). § 87(2)(b) alleged that Sgt. Jonathan Hom of the 23<sup>rd</sup> Precinct called him a nigger more than three times (**Allegation D – Offensive Language**, § 87(2)(g)). § 87(2)(b) alleged that Sgt. Hom struck him in the chest with a radio more than five times (**Allegation E – Force**, § 87(2)(g)). § 87(2)(b) alleged that once at the stationhouse, while he was secured in handcuffs and ankle restraints, PO Perez pushed him inside the holding cell, causing him to fall to the ground (**Allegation F – Force**, § 87(2)(g)). § 87(2)(b) alleged that Sgt. Hom repeated that he had called § 87(2)(b) a nigger (**Allegation G – Offensive Language**, § 87(2)(g)).

Video footage from a cell phone captures a portion of this incident.

## Findings and Recommendations

### **Allegation A – Discourtesy: On East 115<sup>th</sup> Street, between 5<sup>th</sup> Avenue and Madison Avenue, Police Officer Jonathan Perez spoke discourteously to § 87(2)(b)**

On June 30, 2017, at approximately 11:21 p.m., § 87(2)(b) flagged down police officers in front of 1590 Park Avenue in Manhattan and reported that § 87(2)(b) assaulted him with a baseball bat (Board Review 01). § 87(2)(b) provided § 87(2)(b)'s address and where he was last seen. Approximately 10 minutes later, PO Perez and his partner, PO Julian Febres of the 23<sup>rd</sup> Precinct, approached § 87(2)(b) on East 115<sup>th</sup> Street, between 5<sup>th</sup> Avenue and Madison Avenue, in Manhattan intending to arrest him regarding the alleged assault. It is undisputed that PO Perez asked for § 87(2)(b)'s identification and that § 87(2)(b) provided it to him.

§ 87(2)(b) (Board Review 02) alleged that PO Perez said, “This is the motherfucker right here.” § 87(2)(b) testified that he had not assaulted anyone, so he did not know why he was being arrested. § 87(2)(b) testified that he asked PO Perez what was going on and that PO Perez responded, “You know what the fuck this is.” This testimony given to the CCRB on August 24, 2017, was generally consistent with § 87(2)(b)'s statement to IAB on July 13, 2017 (Board Review 03), although § 87(2)(b) told IAB that he was told to “shut the fuck up,” rather than “you know what the fuck this is.” Other than his mother, § 87(2)(b) § 87(2)(b) refused to provide the name or contact information for anyone who might have witnessed the incident.

§ 87(2)(b) (Board Review 06) testified that she did not hear the initial conversation between officers and § 87(2)(b) because she was on the opposite side of the street.

PO Perez (Board Review 04) denied making any of the alleged discourteous remarks. PO Perez denied using profanity at any point during the incident.

FO Febres (Board Review 05) denied hearing PO Perez make the alleged discourteous remarks or hearing PO Perez use profanity at any point during the incident.

§ 87(2)(g)

**Allegation B – Force: On East 115<sup>th</sup> Street, between 5<sup>th</sup> Avenue and Madison Avenue, officers used physical force against § 87(2)(b)**

It is undisputed that PO Perez and other officers attempted to place § 87(2)(b) in handcuffs and that § 87(2)(b) resisted arrest.

§ 87(2)(b) testified that he pulled his arm away from PO Perez because he did not know why he was being arrested. § 87(2)(b) alleged that three to five unidentified officers immediately surrounded him and took him to the ground. § 87(2)(b) testified that he resisted on the ground solely by flipping his body around and attempting to stand up and run away for approximately three minutes until he was secured in handcuffs. § 87(2)(b) alleged that while he was resisting, unidentified officers—he could not see which ones—punched him in the head and back.

§ 87(2)(b)'s mother, § 87(2)(b) testified that approximately 15 uniformed officers surrounded § 87(2)(b) while he was on the ground, but that she could not see what § 87(2)(b) or any of the officers were doing.

PO Perez testified that after providing his identification, § 87(2)(b) tried to flee on foot, and that PO Perez stopped him by grabbing him around his torso. PO Perez testified that he and PO Febres participated in handcuffing § 87(2)(b) but denied that he or any officer punched § 87(2)(b). PO Perez testified that he did not recall if additional officers assisted him and PO Febres in handcuffing § 87(2)(b).

PO Febres testified that he did not recall how § 87(2)(b) came to be placed in custody. PO Febres denied punching § 87(2)(b) or seeing any officer do so.

Sgt. Hom (Board Review 07) testified that solely he, PO Perez, and PO Febres participated in handcuffing § 87(2)(b) while other officers focused on crowd control. Sgt. Hom denied that he or any officer punched § 87(2)(b).

Video footage does not capture this portion of the incident.

§ 87(2)(g)

**Allegation C – Force: On East 115<sup>th</sup> Street, between 5<sup>th</sup> Avenue and Madison Avenue, Police Officer Jonathan Perez hit § 87(2)(b) against a vehicle.**

After § 87(2)(b) was secured in handcuffs, he was escorted to a police vehicle by PO Perez and PO Febres. § 87(2)(b) alleged that PO Perez twice pushed the back of his neck towards the police vehicle, causing his face to make contact with the police vehicle two times.

In his statement to IAB, § 87(2)(b) said that officers “beat on him” prior to being placed inside the vehicle, but he did not specifically allege that his face was forced into a vehicle. § 87(2)(b) told IAB that there was bruising to the right side of his face, but he told the CCRB that there were solely “marks” on the right side of his face.

The Prehospital Care Report (Board Review 08) indicates that § 87(2)(b) did not allege that his face was forced into a vehicle to Emergency Medical Services, who treated him the

same night of the incident, while § 87(2)(b) was under police custody. It indicates § 87(2)(b) said that he fell. It also does not note any injury to § 87(2)(b)'s face. § 87(2)(b) went to § 87(2)(b) seven days after this incident, and the § 87(2)(b) medical records (Board Review 09) indicate that he complained of pain to the right side of his face after officers “slammed” his face on the ground. The medical records do not indicate that § 87(2)(b) alleged his face was hit against a vehicle, and they do not note any injury to his face. § 87(2)(b)'s arrest photograph (Board Review 17) does not depict any visible injury to his face. The command log (Board Review 18) does not list any physical injuries for § 87(2)(b)—it indicates that § 87(2)(b)'s physical/mental condition was intoxicated. There were negative results for a Medical Treatment of Prisoner Report.

Cell phone video footage (Board Review 10) filmed by an unidentified individual, provided to the CCRB by § 87(2)(b) a summary of which may be found at Board Review 11, and a SnagIt copy of which is placed below, appears to show the moments leading up to § 87(2)(b) being placed inside the police vehicle. The video does not show § 87(2)(b)'s face being forced against the police vehicle. However, an officer steps in front of the frame of the camera, obstructing the view of § 87(2)(b) as he is ostensibly placed inside the vehicle.



201705982\_20180112\_1602\_DM.mp4

§ 87(2)(b) alleged that an officer forced § 87(2)(b)'s head into the roof of a police vehicle two to three times.

PO Perez testified that he pushed on the top of § 87(2)(b)'s head in an attempt to escort him inside the police vehicle, but denied that he ever forced § 87(2)(b)'s face into the police vehicle or that § 87(2)(b)'s face ever made contact with the police vehicle.

Sgt. Hom and PO Febres both denied seeing PO Perez force § 87(2)(b)'s face against a police vehicle.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation D – Offensive Language: On East 115<sup>th</sup> Street, between 5<sup>th</sup> Avenue and Madison Avenue, Sergeant Jonathan Hom made remarks to § 87(2)(b) based upon race.**

Once § 87(2)(b) was inside the police vehicle, Sgt. Hom entered the front passenger seat. PO Perez sat in the driver's seat, and PO Febres sat in the back with § 87(2)(b).

§ 87(2)(b) alleged that Sgt. Hom called him a nigger a few times inside the police vehicle. § 87(2)(b) testified that he did not recall the exact context of the offensive language. In his statement to IAB, § 87(2)(b) also alleged that an officer called him the n-word.

§ 87(2)(b) testified that she stood outside of the police vehicle, but that she could not hear anything being said to § 87(2)(b) while he was inside it.

Sgt. Hom denied using the alleged offensive language. Both PO Perez and PO Febres denied that Sgt. Hom used the alleged offensive language.

§ 87(2)(g)

**Allegation E – Force: On East 115<sup>th</sup> Street, between 5<sup>th</sup> Avenue and Madison Avenue, Sergeant Jonathan Hom struck § 87(2)(b) with a radio.**

§ 87(2)(b) alleged that Sgt. Hom struck him in the chest upwards of five times with a radio. However, in his statement to IAB, § 87(2)(b) alleged that Sgt. Hom struck him in the face with his radio, causing a knot to form. He did not tell IAB that Sgt. Hom struck him in the chest with a radio.

Neither the Prehospital Care Report nor the § 87(2)(b) medical records indicates that § 87(2)(b) alleged being struck with a radio, and neither indicates that § 87(2)(b) complained of chest pain or that he sustained any injury to his chest. There were negative results for a Medical Treatment of Prisoner Report, § 87(2)(b)'s arrest photograph does not depict any visible injuries, and the command log does not list any physical injuries to § 87(2)(b).

§ 87(2)(b) testified that she saw two officers sit in the back seat and each punch § 87(2)(b) about three times. This was contradicted by § 87(2)(b)'s own testimony, as well as the testimonies of Sgt. Hom, PO Perez, and PO Febres. They each indicated that § 87(2)(b) was not punched and that only one officer sat in the back with § 87(2)(b). § 87(2)(b) did not allege that any officer struck § 87(2)(b) with a radio.

Sgt. Hom denied striking § 87(2)(b) with a radio. PO Perez and PO Febres both denied that Sgt. Hom struck § 87(2)(b) with a radio.

§ 87(2)(g)

**Allegation F – Force: At the 23<sup>rd</sup> Precinct stationhouse, Police Officer Jonathan Perez used physical force against § 87(2)(b)**

§ 87(2)(b) testified that he partially “blacked out” at the stationhouse due to a combination of alcohol he had consumed earlier that night and the emotion from this incident.

§ 87(2)(b) testified that he remembered refusing to cooperate in answering questions and moving inside the holding cell. He also remembered being placed in ankle shackles. § 87(2)(b) alleged that PO Perez pushed him into a holding cell, causing him to fall on his right shoulder.

PO Perez testified that § 87(2)(b) was uncooperative in the stationhouse, refusing to remove his own shoes or move where he was directed. PO Perez testified that § 87(2)(b) was placed in ankle shackles to prevent him from kicking while PO Perez removed his shoes. PO Perez testified that § 87(2)(b) refused to walk into the holding cell, so he pushed him by the back of the pants inside the holding cell.

PO Febres denied seeing PO Perez push § 87(2)(b) to the ground, and Sgt. Hom testified that he did not recall seeing § 87(2)(b) get pushed to the ground.

The Prisoner Holding Pen Roster (Board Review 19) indicates that § 87(2)(b) was the only prisoner when he was lodged, and the next prisoner was not lodged until more than three hour later.

An officer's use of force must be reasonable under the circumstances. NYPD Patrol Guide, Section 221-01 (Board Review 12).

§ 87(2)(g)

**Allegation G – Offensive Language: At the 23<sup>rd</sup> Precinct stationhouse, Sergeant Jonathon Hom made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) alleged that while in the holding cell he questioned Sgt. Hom about having called him a nigger inside the police vehicle at the scene of his arrest. § 87(2)(b) alleged that Sgt. Hom repeated that he called him a nigger immediately after § 87(2)(b) was lodged in the holding cell.

Sgt. Hom denied making the alleged offensive language. Both PO Perez and PO Febres denied hearing Sgt. Hom make the alleged offensive language.

There was no audio or video recording of this portion of the incident. The Prisoner Holding Pen Roster indicates that § 87(2)(b) was alone when he was lodged in the holding cell which is when the alleged offensive remark occurred.

§ 87(2)(g)

**Mediation, Civil and Criminal Histories**

- This case was not suitable for mediation due to § 87(2)(b)'s arrest.
- As of September 5, 2017, § 87(2)(b) has not filed a Notice of Claim with the New York City Comptroller's Office regarding this incident (Board Review 13).
- § 87(2)(b), § 87(2)(a) 160.50
- § 87(2)(g)

**Civilian and Officer CCRB Histories**

- This is the first CCRB complaint filed by § 87(2)(b) and the second CCRB complaint in which he was a victim (Board Review 16). § 87(2)(b)

- PO Perez has been a member of service for six years, and he has been the subject of four prior CCRB allegations, one of which was substantiated. In CCRB 201509267, a property damage allegation was substantiated. The CCRB recommended formalized training, and the NYPD issued instructions.
  - Sgt. Hom has been a member of service for 12 years, and he has been the subject of 17 prior CCRB allegations, none of which was substantiated. There is one prior allegation of using an object as a club and no prior offensive language allegation.
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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date